

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JOSEPHINE IZZI,

Plaintiff,

vs.

Civ. No. 10-0668 JB/LFG

**SERJIC KHECHUMIAN;
VICTOR M. MARTINEZ,**

Defendants.

**MAGISTRATE JUDGE'S ANALYSIS
AND RECOMMENDED DISPOSITION¹**

THIS MATTER is before me on an Order of reference [Doc. 5]. Pro se Plaintiff Josephine Izzi seeks the Court's order authorizing her to proceed *in forma pauperis* ("IFP"), with this litigation, *i.e.*, without prepaying costs or filing fees. *See* Doc. 3, filed July 15, 2010. IFP status should be granted only if a plaintiff demonstrates that she "cannot because of [her] poverty pay or give security for the costs . . . and still be able to provide [her]self and dependents with the necessities of life." *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). If the Court determines that "the allegation of poverty is untrue," it must dismiss the case. *See* 28 U.S.C. § 1915(e)(2)(A).

Izzi, who is 42 and has no dependents, earns \$2200/month as a teacher and brings home at least \$1450/month. *See* Doc. 3 at 2. She lives with her parents, thus she has no expenses for rent or utilities. *See id.* at 4. She lists expenses of \$400/month for food, \$560/month for car payment/insurance and other transportation costs, and \$50/month for medical expenses. *See id.* On

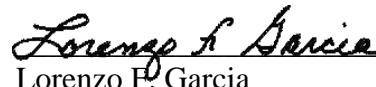
¹ Within fourteen (14) days after a party is served with a copy of this analysis and recommended disposition, that party may, pursuant to 28 U.S.C. § 636(b)(1), file written objections to such analysis and recommendation. A party must file any objections within the fourteen-day period allowed if that party wants to have appellate review of the analysis and recommendation. If no objections are filed, no appellate review will be allowed.

these facts, Izzi has failed to show that she cannot, because of poverty, provide herself with the necessities of life and pay the filing fee. *See Adkins*, 335 U.S. at 339.

I recommend, therefore, that Izzi's application to proceed IFP be denied and her Complaint dismissed without prejudice. *See* § 1915(e)(2)(A); *Lemons v. K.C. Mo. Police*, No. 05-1254, 158 Fed. Appx. 159, 160, 2005 WL 3388580, at *1 (10th Cir. Dec. 13, 2005) (noting that, if a plaintiff fails to establish that she is unable to pay fees, the Court should dismiss the complaint without prejudice, after which the plaintiff "may initiate a new action by 1) refiling [her] complaint and 2) paying the [] filing fee required under 28 U.S.C. § 1914").

Recommended Disposition

That Izzi's request to proceed *in forma pauperis* [Doc. 3] be denied and that her Complaint be dismissed without prejudice.



Lorenzo F. Garcia
United States Magistrate Judge